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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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July 24, 1980

The Honorable Ronald H. Mottl
Chairman, Subcommittee on Special
Investigations
Committee on Veterans Affairs
House of Representatives

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Dear Mr. Chairman:

You requested our views as to the legal authority of the Office of Management and Budget (OMB) to direct the Administrator of Veterans Affairs to stop work under certain Veterans Administration (VA) contracts. At issue are letters dated November 20, 1979, and December 26, 1979, from the OMB Director and the OMB Associate Director for Human Resources, Veterans, and Labor, respectively, to the VA Administrator directing such action.

In a written response for the record of a hearing of your Subcommittee held May 1, 1980, the Director of OMB's Office of Federal Procurement Policy (OFPP) asserted such legal authority. The OFPP Director's position is based on (1) the authority provided OMB by 31 U.S.C. 16 to prepare the budget, which includes the authority to revise, reduce or increase agency appropriation requests; and (2) a Presidential memorandum dated May 3, 1979, directing OMB to "oversee government-wide efforts to combat fraud, waste and mismanagement in program operations."

You question whether this action by OMB is an unwarranted intrusion on the autonomy of the Administrator of VA, in view of the authority provided by 38 U.S.C. 210 and 213 to the Administrator of VA, which includes the authority to contract for necessary supplies and services.

The statute upon which the OFPP Director relies, 31 U.S.C. 16, provides in part as follows:

"There is in the Executive Office of the President an Office of Management and Budget . . . * * * The Office, under such rules and regulations as the President may prescribe, shall prepare the Budget, and any proposed supplemental or deficiency appropriations, and to this end shall have authority to assemble, correlate, revise, reduce, or increase the requests for appropriations of the several departments or establishments."

The Presidential memorandum is addressed to the Attorney General, the Director, Office of Management and Budget, and the Director, Office of Personnel Management and is entitled "Improving Management and Combating Fraud and Waste in Federal Programs." The memorandum assigns specific responsibilities to the OMB Director, as follows:

"* * * providing direction and overseeing government-wide efforts to combat fraud, waste, and mismanagement in program operations."

As you point out, the Administrator of Veterans Affairs is responsible, under 38 U.S.C. 210, for the control and management of the VA, including the authority to enter into contracts provided by 38 U.S.C. 213. However, this authority is subject to the direction of the President. Inasmuch as OMB, which is in the Executive Office of the President, exercises certain government-wide management functions in the budgeting and apportioning of funds, and inasmuch as OMB operates under such rules and regulations as the President may prescribe, it is our opinion that the reliance by OMB on a Presidential memorandum providing OMB authority to combat fraud, waste, and mismanagement government-wide as authority for directing the issuance of stop work orders provides at least an arguable basis for such a position.

Further support for the OMB position is provided by reviewing the facts leading to OMB involvement in this matter. In the November 20 letter, the OMB Director offers two reasons for OMB's interest in VA's computer procurements:

"* * * First, they exemplify the year-end spending that this Administration has sought to minimize; and, second, the health care information, related expenditures, other than the four contracts intended to lead to the development of HCIS as a system, appear to us to ignore the fact that HCIS has been denied in the last two VA budgets because it was not being developed as a system. These contracts would accomplish through reprogramming precisely the uncoordinated efforts that were denied in your 1979 and 1980 budgets." (Emphasis added.)

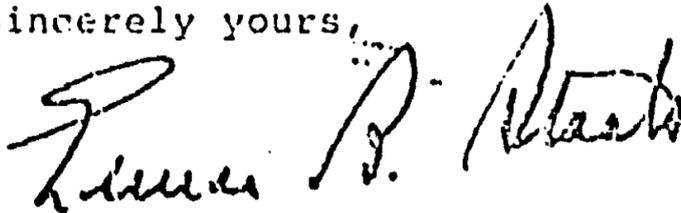
We think there is little question that these concerns, in particular the second one, are directly relevant to the OMB Director's overall formulation and execution authority. His use of this authority to direct that work on contracts which he believes are circumventing or nullifying decisions made in the budget process does not strike us as unreasonable.

However, the more important question, in our view, is the legal effect of an OMB direction to stop work on specific contracts or more specifically of a refusal by the VA Administrator to comply with an OMB direction to that effect. Since the authority relied on by OMB, 31 U.S.C. 16, provides no mechanism for legal enforcement of a direction to issue stop work orders, there would appear to be no mandatory legal means to compel compliance by the VA Administrator in the event of his recalcitrance. In a practical sense, however, the administrative sanctions available to OMB, assuming Presidential concurrence, such as removal of the VA Administrator from office or budget cuts in later appropriation requests, are certain to influence the VA Administrator's decision in a situation such as this.

What appears to have happened here is that the VA Administrator agreed to OMB's stop work direction in order to consider OMB's questions concerning the propriety of the contracts in question. Following the issuance of stop work orders by VA, the two agencies have engaged in an exchange of correspondence and discussions resulting in determinations by VA to terminate some of the contracts under consideration and continue others.

To the extent this cooperative endeavor results in terminating certain procurements because they are not presently needed, or in procuring needed services and supplies in a more orderly manner consistent with applicable procurement laws and regulations, we endorse it. Also, at your request, our Human Resources Division is evaluating VA's actions in connection with several of the terminated contracts.

Sincerely yours,



Comptroller General
of the United States